

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 2:15-CR-00214-1
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Corpus Christi, Texas
)	
AUSTIN CARLIN,)	Monday, September 26, 2016
)	
<u>Defendant.</u>)	(10:22 a.m. to 11:08 a.m.)

SENTENCING

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

APPEARANCES: See page 2

Court Recorder: Genay Rogan

Clerk: Brandy Cortez

Court Security Officer: Adolph Castillo

Deputy U.S. Marshals: S. Osteicher; G. Butcher

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ORIGINAL AND ONE COPY AT THE OFFICIAL RATE.
General Order 94-15, United States District Court,
Southern District of Texas.

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

APPEARANCES:**For Plaintiff:**

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For Defendant:

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Corpus Christi, Texas, Monday, September 26, 2016; 10:22 a.m.

(Call to Order)

THE COURT: Court calls Cause No. 2:15-cr-00214,
United States of America versus Austin Carlin.

MR. MARTINEZ: Hugo Martinez for the United States.
Good morning, Your Honor.

THE COURT: Good morning.

MR. BYRNE: Stephen Byrne for Mr. Carlin.

THE COURT: Good morning, sir. Would you raise your
right hand?

(Defendant Sworn)

THE COURT: Okay. Mr. Byrne, did you substitute in
or --

MR. BYRNE: I was appointed. The Federal Public
Defender had a conflict of interest.

THE COURT: Okay. I guess I missed that. So you --
you have -- Ms. Langford's no longer on the case?

MR. BYRNE: That's true.

THE COURT: Correct. Public Defender, the whole
office is no longer on the case, so you've been appointed to
represent Mr. Carlin. Mr. Carlin, have you had sufficient
opportunity to visit with your attorney here regarding --

THE DEFENDANT: Yes.

THE COURT: -- the sentencing?

THE DEFENDANT: Yes, ma'am, I have.

1 **THE COURT:** Okay. And you've been sworn in. Would
2 you state your name?

3 **THE DEFENDANT:** Austin Carlin.

4 **THE COURT:** We're here today for sentencing. On
5 June 9th, 2016, you entered a plea of guilty to count one of
6 the indictment. I ordered a presentence investigation report
7 to be done. Did you receive a copy of the presentence report?

8 **THE DEFENDANT:** Yes, Your Honor.

9 **THE COURT:** And did you have a chance to review the
10 report with your attorney?

11 **THE DEFENDANT:** Yes.

12 **THE COURT:** Okay. Were you able to read it also?

13 **THE DEFENDANT:** I wasn't able to read it so he --

14 **THE COURT:** Okay.

15 **THE DEFENDANT:** -- he read it for me.

16 **THE COURT:** Your attorney read it to you?

17 **THE DEFENDANT:** Yes.

18 **THE COURT:** You all discussed it together?

19 **THE DEFENDANT:** Yeah.

20 **THE COURT:** And you're ready to proceed to your
21 sentencing?

22 **THE DEFENDANT:** Yes, Your Honor.

23 **THE COURT:** Okay. I don't see any objections on
24 file. Counsel, any corrections to the report from the
25 Government?

1 **MR. MARTINEZ:** None from the Government, Your Honor.

2 **THE COURT:** From the defense?

3 **MR. BYRNE:** No, Your Honor. I did file a sentencing
4 memorandum.

5 **THE COURT:** I received that and I've reviewed that.
6 Okay. Then the Court will accept the presentence report as its
7 findings of fact and that gives me an advisory guideline range
8 calculated to be a total offense level of 37, criminal history
9 category of III, which produces a range of 262 to 327 months.
10 Is that right, Mr. Martinez?

11 **MR. MARTINEZ:** That is correct, Your Honor.

12 **THE COURT:** And Mr. Byrne?

13 **MR. BYRNE:** Yes, Your Honor.

14 **THE COURT:** What's the recommendation of the
15 Government?

16 **MR. MARTINEZ:** Your Honor, prior to making any
17 recommendations, the Government respectfully requests from the
18 Court to call the victim's mother to give a victim impact
19 statement.

20 **THE COURT:** Okay. You can proceed.

21 **MR. MARTINEZ:** Thank you, Your Honor.

22 **(Pause)**

23 **THE COURT:** Good morning, ma'am.

24 **MS. MULLIS:** Good morning, Judge.

25 **THE COURT:** Shall we swear her in or she just reads a

1 statement?

2 **MR. MARTINEZ:** She just reads a statement, Your
3 Honor.

4 **THE COURT:** Yeah, okay.

5 **MR. MARTINEZ:** Would you please state your name?

6 **MS. MULLIS:** My name is Heather Mullis.

7 **MR. MARTINEZ:** And are you the mother of Jane Doe,
8 the victim in this case?

9 **MS. MULLIS:** Yes, I am.

10 **MR. MARTINEZ:** Do you have a statement you'd like to
11 read for the Court?

12 **MS. MULLIS:** I do.

13 **MR. MARTINEZ:** Would you please do so?

14 **MS. MULLIS:** I have written, re-written the statement
15 so many times trying to find the words that could somehow
16 express how I feel, how this crime has literally torn our lives
17 apart. I'm here to explain how this unimaginable crime has
18 affected not only Chloe but myself and my entire family.

19 On February 22nd, 2015, around 4:00 a.m., our lives
20 were forever changed and will never be the same again. From a
21 single phone call, I learned that Austin Carlin not only stole
22 a vehicle from where my daughter was having a sleepover at her
23 grandmother's house with her cousin but she had -- but he had
24 also kidnapped my precious baby girl while she was asleep.
25 It's hard to explain the psychological damage and the emotions

1 and mental anguish that begin from that moment. It's every
2 parent's worst fear and you realize you have no control of the
3 outcome.

4 I, myself, and my husband got into separate vehicles
5 and began to search for our daughter. The flashbacks of
6 driving on those dark roads searching in the fog down every
7 road you could think of, making yourself look under brush and
8 even dumpsters thinking you would just find her lifeless body.
9 As a mother, you protect your children at all costs, even if it
10 means your own life, how would I give anything to trade places
11 with her. Thoughts flood your mind along with questioning
12 yourself, how did this happen. It was like an out-of-body
13 experience you hear about. It felt as if I was in one spot
14 while everyone else was moving around me so fast.

15 After hours of searching, I returned home without my
16 child. To see the faces of my other three children when I came
17 home without Chloe was devastating. They tried to be strong
18 for me and my husband and protect us from seeing how scared and
19 confused they really were and there was no way to explain where
20 their little sister was and why this happened.

21 Normal is no longer a word to describe Chloe or my
22 family. Her life and ours have been shattered into a million
23 pieces and they will never be placed back together again as
24 they once were.

25 After Chloe was found, she was taken to local

1 hospital to be examined without me by her side. She was alone
2 and scared, still not fully understanding what had happened to
3 her. She has overcome so much at such a young age but has much
4 to still overcome. Regular trips to the doctor's office is a
5 problem. Her security and trust have been violated. She's
6 unable to sleep at night in her own bed because she's afraid of
7 how hard she sleeps, unable to feel or hear anything around her
8 as she states to me. She relives that morning in her
9 nightmares and she harbors inside herself what she went through
10 and has decided not to speak of anything that happened. If it
11 is brought up, you see the glimmer in her eyes dull. She shuts
12 down with a blank stare and her eyes swell with tears of
13 sadness, acting like she can't hear you. That horrible day
14 never goes away. Your mind never lets you forget the details.
15 I wonder what goes through her mind and try to reassure my
16 daughter that everything that happened was not her fault.

17 It is a day-by-day struggle after the media coverage
18 of her abduction using her name with the Amber alert system.
19 And then after the report of the sexual assault, they no longer
20 named her but the community still knew her name and her face.
21 It took her and her siblings from being normal everyday kids
22 who went back and forth to school and extracurricular
23 activities to enduring stares, whispers, and questions every
24 time they turned around. Not knowing the answers people search
25 for or even wanting to be asked, causing issues between them

1 and other students, leaving them distraught and unable to focus
2 on their schoolwork. They were reminded daily with each new
3 question of the terror that their sister was put through. This
4 crime interrupted the normalcy from Chloe's and her siblings'
5 life (phonetic). Also, a piece of their childhood was taken
6 along with that time that will never be replaced.

7 Being 15, 14, and 9 at the time, they all now felt an
8 obligation to be with Chloe 24/7. To watch over her, they took
9 turns and never complained but time was taken from them if they
10 wanted to go to their friends' house but didn't or they gave up
11 trips to go places because she was not allowed to go.

12 As for our family life, the guilt my husband and I
13 carry will never go away as we try to go forward and live life
14 with our children. The crime committed against our child has
15 caused severe setbacks mentally and financially. Chloe is now
16 eight and since that horrific day, has not and will not be
17 allowed to go to stay at her grandmother's house and I am known
18 now as the "no mommy." She always says I tell her no when she
19 wants to go because I'm scared of what may happen after. She
20 doesn't understand the world and the sick people like Austin
21 Carlin who live in it, predators who lurk around with nothing
22 but devilish intentions towards young children waiting to take
23 advantage of their innocence.

24 Austin Carlin is a lying, deceitful human being, a
25 wolf in sheep's clothing who has manipulated the justice system

1 with lies and deception of his character and making the healing
2 process almost incapable. He understood how to convey a plan a
3 day before his crime and proceed without any hesitation. As if
4 that was not enough to kidnap my daughter, he made the decision
5 to sexually assault her and to physically make her
6 inappropriately touch him to gratify himself. This behavior is
7 malicious and disgusting.

8 We are now aware of Mr. Carlin's history of habitual
9 situations and my daughter is not his first victim but she can
10 be his last. I'm begging the Court and yourself, Honorable
11 Judge, to see Mr. Carlin for who he truly is and the
12 everlasting damage he has caused. If not for the quick
13 response of the law enforcement, the community, the volunteers,
14 the AMBER Alert System who never stopped looking for signs of
15 our daughter, I know in the depths of my heart Chloe would no
16 longer be with us today. When he took her, he had no intention
17 of bringing her home.

18 Judge, I would like to ask that the sentence for my
19 daughter's abductor and abuser be equivalent to the suffering
20 he inflicted. He did so without the slightest bit of regret or
21 conscious remorse for what he did, and I beg the Court not to
22 give him the opportunity to have another victim. Austin Carlin
23 deserves nothing less than 50 years for the crime he committed.
24 Why would he deserve to have a life after only 20 years so he
25 can victimize someone else? There's no rehabilitation for the

1 perverted minds or the crimes against children.

2 **THE COURT:** Thank you, ma'am. You can step down.

3 **MR. MARTINEZ:** May I proceed, Your Honor?

4 **THE COURT:** Yes.

5 **MR. MARTINEZ:** Your Honor, the United States is going
6 to recommend the high end on this case and we recognize that
7 that is a very severe offense for someone who's 21 years old,
8 but I think the Court is well aware that this is a very severe
9 crime that Mr. Carlin's committed.

10 And if allowed to do so, I'd like to point out some
11 issues with Mr. Carlin's background that led the Government to
12 this recommendation. And I'd like to start off by discussing
13 his criminal history which is pretty remarkable because in less
14 than a year, from February the 25th of 2013 to February 5th of
15 2014, Mr. Carlin managed to pick up five criminal convictions.
16 And I will recognize that they're not violent offenses. They're
17 of a theft in nature offense but in all but one of those
18 convictions, Mr. Carlin was given probation. I think the
19 reason why he was given probation is because he's a youth and
20 because of the severity of the crimes he committed, he was
21 given a break time after time after time; yet after each break,
22 he revoked his bond.

23 In less than a year after his last conviction, he is
24 kidnapping this child and sexually assaulting her. I think
25 this, even at a very young age, his criminal past says a lot

1 about how dangerous Mr. Carlin is to our community, Your Honor.

2 Now I'd also like to point out that Mr. Carlin does
3 have a history of being a predator. Specifically, I'd point
4 out to Paragraph 42 where Mr. Carlin, at a very young age,
5 sodomized a four-year-old child. That was the beginning of his
6 sexual deviancy, Your Honor, which started many years ago but
7 hasn't been able to go away. And we know it hasn't gone away
8 because Mr. Carlin has been evaluated by numerous doctors, the
9 last of which was a doctor at the Bureau of Prisons. And I
10 want to refer to his forensic evaluation that has been admitted
11 into evidence at previous hearings where Mr. Carlin admits to
12 thinking about touching females in the ages of ranges of 10 to
13 13 years of age. Again, Your Honor, he is telling us of how
14 dangerous of an individual he is. Moreover, the doctor who
15 analyzed Mr. Carlin noted that his risk of sexual recidivism is
16 in the high -- the moderate to high range and we know this
17 based upon the fact that we know that Mr. Carlin has acted out
18 on his sexual urges.

19 And I'd also point to the facts of this particular
20 case, Your Honor. The fact that Mr. Carlin did, in fact,
21 kidnap this child but not only kidnap this child, Mr. Carlin
22 did sexually abuse this child. And I'd point to Paragraph 10
23 of the PSR and where Mr. Carlin describes exactly what
24 happened, what he made this child do, what he did to this
25 child, the photographs that he took of this child. Now they

1 weren't nude photographs but they were photographs where this
2 child was asleep in a vehicle and he focused on certain parts
3 of her body. But what is telling about Mr. Carlin's statement
4 in reference to what he did to this child is how he describes
5 the role he played. He makes it sound like it was this child's
6 idea to pull the vehicle over and do what he -- do what he did
7 to this child, which is ludicrous. His failure to accept
8 responsibility of what he did, I think, says a lot about
9 Mr. Carlin and what a dangerous individual he is.

10 Your Honor, I think the victim's mother said it best.
11 Mr. Carlin is a wolf in sheep's clothing. He's a very
12 dangerous individual because if you were to look at him, he
13 looks like a young -- docile young man, but that's what he
14 does, Your Honor. He gains people's trust. He gained Jane
15 Doe's grandmother's trust. She allowed him to stay with him
16 and the very first time he had access to Jane Doe, the very
17 first time she spent the night, he acted out on that. And it
18 was every parent's worst nightmare at that point to waking up
19 in the middle of the night, knowing that your child is missing,
20 knowing that she is with Mr. Carlin in a stolen vehicle and
21 driving across the State of Texas to Arizona, not knowing
22 whether or not Mr. Carlin was going to hurt this child more so
23 than what he already did, not knowing whether or not you --
24 they would ever see their child again. Mr. Carlin is a very
25 dangerous person and but for law enforcement, but for the FBI,

1 but for the state troopers who acted quickly, the volunteers --
2 we were able to get Jane Doe back.

3 But, Your Honor, we're going to ask for the high end
4 because the high end of this offense reflects the seriousness
5 of the offense. It reflects how dangerous Mr. Carlin is.
6 Thank you, Your Honor.

7 **THE COURT:** All right. Mr. Byrne?

8 **MR. BYRNE:** Judge, I'd like to make very brief
9 opening statements and Mr. Carlin's grandfather would like to
10 speak to the Court.

11 **THE COURT:** Okay.

12 **MR. BYRNE:** Briefly, Judge, you know, one of the
13 beautiful things about this country is that our judicial system
14 recognizes there are two sides. And oftentimes in crimes where
15 there's a victim, it's a tragedy on both sides. It's, of
16 course, a tragedy for the victim and it's also a tragedy for
17 the perpetrator. So I'm going to make arguments arguing for a
18 20-year sentence but I don't mean to diminish in any way the
19 suffering of the victim and the victim's family in this case.
20 At this time, the defense would like to call Bob Carlin. He'd
21 like to -- he is Mr. Carlin's grandfather.

22 **THE COURT:** Okay.

23 **MR. BYRNE:** He'd like to address the Court. Should
24 he stand here or --

25 **THE COURT:** That's fine. He can stand. Where do you

1 want him to stand, right there is okay?

2 (No audible response)

3 MR. BOB CARLIN: Hello, Your Honor.

4 THE COURT: Sir, would you raise your right hand?

5 BOB CARLIN, DEFENDANT'S WITNESS, SWORN

6 MR. BOB CARLIN: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. BOB CARLIN: I'm Austin's grandfather. I love
9 him. I don't appreciate what he's done. I know what he has
10 done is not right but at a young age, Austin was sodomized. He
11 was sexually abused. We didn't find out about that until years
12 later. Okay. I'm not making excuses for him but Austin is 21
13 years old with a brain of a 10 year old. He acts as if though
14 he is 10 years old, not 21 years old. He's a 10 year old
15 trapped in a 21-year-old body. He -- according to the letter
16 that he sent me for my birthday, you can see where his level is
17 at. I understand he needs to be punished and I agree he needs
18 to be punished but to take away the rest of his life is
19 senseless to me because he is a good kid inside. He needs
20 medical help. I know he does. We've tried to get him medical
21 help. Financially, I can't afford thousands and thousands of
22 dollars.

23 If the Court could please take that into
24 consideration and try and get him the medical help that he
25 needs instead of just putting him behind bars and keeping him

1 there until he's an old man, it would be greatly appreciated.

2 **THE COURT:** All right. Thank you. Any questions
3 from the Government?

4 **MR. MARTINEZ:** No questions, Your Honor.

5 **THE COURT:** Thank you, sir. You can step down.
6 Anything further --

7 **MR. BYRNE:** Judge, I just -- just for the --

8 **THE COURT:** -- from the defense?

9 **MR. BYRNE:** Yes, Your Honor, just for the sake of the
10 hearing, I did file a sentencing memorandum. I don't have a
11 whole lot to add outside of that. Just -- I'd just like to
12 summarize it briefly. We're asking for, obviously, a sentence
13 that's lower than guidelines. We're asking the Court to depart
14 or to vary to the mandatory minimum and there are several
15 reasons. First is 5K2.13 which is a chapter in the Federal
16 Sentencing Guidelines that suggests that a downward departure
17 might be warranted in a case where a defendant suffers from a
18 diminished capacity. I think that -- you know, I'm not certain
19 that his case falls squarely under that chapter, to be frank
20 but, I think that it's something that the Court should consider
21 as a policy under the Guidelines. The Guidelines suggest a
22 downward departure when an individual, while suffering from a
23 significantly reduced mental capacity and that mental capacity
24 contributed substantially to the commission of the offense.
25 And I think it's clear from the evaluations that have been

1 done, the facts and circumstances of the case that Mr. Carlin
2 does have a significant reduced mental capacity.

3 He -- you know, something that's very interested,
4 Judge, is that he -- when he -- the same day that he was
5 arrested, he was interrogated by FBI agents and he said in that
6 inter -- in that interrogation he knew what he had done was
7 wrong. He admitted to sexually assaulting the victim in this
8 case pretty much without prompting from the FBI. He
9 volunteered that information and we can look at that as, well,
10 he -- that was an unwise confession or he's very
11 unsophisticated or he's naïve. Well, the other way of looking
12 at is, is, well, maybe that was extraordinary acceptance of
13 responsibility.

14 His criminal history, I think is interesting because
15 it reflects a lot of what happened in this case and it shows a
16 lack of forethought and planning, spur of the moment, getting
17 into a -- taking someone else's vehicle and just taking off
18 which is what he did in this case. And I think that that lends
19 itself -- and including his mental illness and his diagnoses
20 and the symptoms of those diagnoses contribute to Mr. Carlin
21 maybe not having complete control or power over reason or to
22 control behavior he knows is wrongful. And, you know, there's
23 two ways of looking at that. You know, I'm sure the Government
24 would argue that his lack of control and diminished, I guess,
25 capacity for reason makes him more dangerous and in some ways,

1 it does. But we -- and that's what this Guideline suggests, is
2 that we take into account the fact that Mr. Carlin, he's not
3 functioning like a -- as an adult, a healthy adult who is --
4 has a full capacity to understand right and wrong and to make
5 decision, and that's mitigating.

6 We, as a people, acknowledge that someone like
7 Mr. Carlin has a reduced, I think, culpability when it comes to
8 crimes like this because in some ways, it's less sinister.
9 He's not this grown man who's making choices with a healthy
10 brain. And so I ask the Court to consider his diminished
11 capacity in forming a sentence.

12 His criminal history also contributes to his
13 Guideline range. He has six criminal history points. I think
14 that that's over-represented. All of his criminal history took
15 place in about the course of a year when he was the age 17 and
16 18. His criminal history is also, I would argue, relatively
17 benign and I think that what we see in his criminal history is
18 part of what we see in this case which is criminal behavior
19 fueled by his mental limitations.

20 And then the other thing I wanted the Court to
21 consider is the quality of Mr. Carlin's incarceration. How --
22 you know, I think that we need to question what's going to
23 happen to him in prison. Is he himself going to be abused,
24 taken advantage of in prison? Is he going to be able to take
25 advantage of the educational opportunities because he has such

1 a low learning capacity?

2 And then when Mr. Carlin's released from custody, be
3 it 20 years or 50 years from now, he's going to be released;
4 and what is our responsibility to deter future criminal
5 behavior, to rehabilitate Mr. Carlin which is a stated goal of
6 the sentence? He's going to miss his 20s and 30s which is the
7 years that even normal healthy people use to learn skills to
8 survive in life independently. And Mr. Carlin, who -- he --
9 who just naturally has a hard time doing that, how is he going
10 to be when he's released when he's 40 or 50 or 60? Does
11 prolong -- is prolonged incarceration going to make it so that
12 Mr. Carlin can survive on his own if he's released? If -- even
13 if he gets -- if the Court sentences him at the low -- at the
14 minimum, he's still going to be about 40 years old when he's
15 released.

16 I did include a copy of the letter that Mr. Carlin
17 wrote to his grandfather. Now it -- that letter, I think,
18 expresses my dealings with Mr. Carlin, is that he is -- he's
19 childish and he's not childish in a sense that he's immature or
20 he hasn't had life experiences. He's childish because that's
21 the way his brain is; and when I speak to Mr. Carlin, I often
22 feel like I'm dealing with one of my children who are 8 and 12
23 in the way that I have to explain things to him and his
24 reactions to things.

25 So we'd like to ask the Court also to recommend --

1 well, here's the other thing, too, is that he -- his legal
2 problems may not be over after the sentence. He -- you know, I
3 -- it's my understanding that the -- his -- Ms. Langford had
4 discussed with the State District Attorney's Office about not
5 filing charges of indecency with a child against Mr. Carlin but
6 that's not a guarantee. I don't know what they're going to do.
7 I assume that they're not but it's possible that they'll decide
8 that 20 years wasn't enough. Maybe they'll listen to the
9 victim's family in that a greater sentence is required and
10 they'll charge him with indecency with a child and he'll go
11 back to the State which by the way, I believe he was in State
12 custody first so if he goes back to State custody to face
13 indecency with a child charge and gets a sentence there, he's
14 going to go to State custody first and then he'll go to the --
15 to federal custody.

16 He also has revocation proceedings pending in
17 Colorado so I'm asking the Court to include in the judgment
18 your recommendation that this federal sentence run concurrent
19 with a sentence that he receives in the State of Texas or in
20 the State of Colorado for his pending charges. And I think
21 that his -- and the quality of his incarceration could be
22 greatly improved if he was close to his family while he was
23 incarcerated so we're asking the Court also to recommend to the
24 Bureau of Prisons that he serve his sentence in a prison as
25 close as Colorado Springs, Colorado.

1 **MR. MARTINEZ:** May I address the Court, Your Honor?

2 **THE COURT:** Yes.

3 **MR. MARTINEZ:** Your Honor, just so that the Court
4 knows, I did personally speak to the First Assistant of the
5 Nueces County DA's Office prior to Mr. Carlin pleading guilty
6 to this offense and it was explained to me by the First
7 Assistant that the District Attorney's Office would not pursue
8 the state charges against Mr. Carlin. This is something that I
9 discussed with the victim's family prior to this plea
10 agreement, so just so the Court can understand that what
11 Mr. Carlin receives today in federal court will be his
12 punishment.

13 Furthermore, if allowed to do so, may I address the
14 5K2.13 diminished capacity argument from the defense?

15 **THE COURT:** Yes.

16 **MR. MARTINEZ:** If I can do so, Your Honor, the
17 diminished capacity policy statement specifically states that
18 if the departure is warranted under the policy, the extent of
19 the departure should reflect the extent to which the reduced
20 mental capacity contributed to the commission of the offense.
21 We are not here because Mr. Carlin has the mind of a 10 year
22 old. That did not contribute to his offense. We are here
23 because Mr. Carlin is a sexual predator. I believe that those
24 are two different things. This is more of a scenario where
25 someone with a low, diminished capacity was may be talked into

1 running aliens or drugs through the checkpoint. This is a
2 totally separate situation. That being said, more importantly,
3 Your Honor, the guidelines specifically state a court may not
4 depart below the applicable guideline range if -- and I'll
5 point to number two -- facts and circumstances of the
6 defendant's offense indicated a need to protect the public
7 because the offense involved actual violence or a serious
8 threat of violence. Well, that's exactly what we have here.
9 We need a sentence that will protect the public from
10 Mr. Carlin.

11 But moreover, number three states that the
12 defendant's criminal history indicates a need to incarcerate
13 the defendant to protect the public. Again, that's the exact
14 same argument that I have.

15 Lastly, number four, if the defendant had been
16 convicted of an offense under Chapter 71 or 109 or 110 or 117,
17 he would not be eligible for this offense. Well, he wasn't
18 convicted under those chapters but Chapter 109(a) is sexual
19 abuse. He was convicted of a kidnapping but his crime involved
20 just that, the sexual abuse of a child and I think that
21 Congress is telling us that when we're dealing with offenses
22 involving children, we're not going to care about mental
23 capacity because it wasn't the fact that the person had mental
24 capacity that caused him to sexually abuse a child. It's the
25 fact that the person was a sexual deviant. So we would -- we

1 argue that the departure for mental capacity is inappropriate
2 in this particular case, Your Honor.

3 **THE COURT:** Anything else before I allow your client
4 to speak, Mr. Byrne?

5 **MR. BYRNE:** No, Your Honor. Mr. Carlin would like
6 to --

7 **THE COURT:** Mr. Carlin, is there anything you want to
8 say to the Court about your sentence?

9 **THE DEFENDANT:** I just really want to say I'm sorry
10 and -- to the family and to my grandfather and my family, and I
11 want to get as much education as I can while I'm in prison.

12 **THE COURT:** Okay. Is that all?

13 **(Pause)**

14 **MR. MARTINEZ:** Your Honor, may I address the Court?
15 I have spoken to the victim's family. They indicated at length
16 -- so has Probation in reference to restitution -- they have
17 indicated they don't have a restitution request but I would
18 like to ask them one more time before the Judge issues
19 sentencing?

20 **THE COURT:** Okay.

21 **MR. MARTINEZ:** Thank you, Your Honor.

22 **(Pause)**

23 **MR. MARTINEZ:** Nothing further, Your Honor. We're
24 ready to proceed.

25 **(Pause)**

1 **THE COURT:** The Court adopts the presentence report
2 as written. The Court's going to deny a request for a
3 variance, will sentence the defendant at the low end of the
4 guideline which is 262 months based on the mental health and
5 intellectual disability set forth here in the report and as has
6 been argued and presented to the Court in the past. So Court
7 will sentence the defendant to 262 months in custody, order you
8 to pay to the United States a special assessment of \$100.00.

9 On release from custody, you will be placed on
10 supervised release for a term of 10 years. While on that
11 supervision, you'll be ordered to comply with standard
12 conditions that have been adopted by the Court, abide by any
13 mandatory conditions required by law and some of the mandatory
14 conditions include that you not possess a firearm, ammunition,
15 destructive device, or any other dangerous weapon, that you
16 cooperate in the collection of DNA as directed by the probation
17 officer, that you comply with the requirements of the Sex
18 Offender Registration and Notification Act as directed by a
19 probation officer, the Bureau of Prisons, or any state
20 registration where you reside or where you work or where you're
21 a student.

22 Based on the information in the report, I'm going to
23 order special conditions that you participate in a mental
24 health program as being necessary and approved by the probation
25 officer. There are several conditions that are specific to the

1 type of offense here and I do need to review those with you.
2 So if you don't understand or if I'm going too fast, please let
3 me know.

4 First is the sex offender children prohibition and it
5 requires that you not reside, work, access, or loiter within
6 1,000 feet of schoolyards, parks, playgrounds, arcades, or
7 other places that are used primarily by children under the age
8 of 18, where children generally congregate, where you generally
9 find children unless approved in advance in writing by the
10 probation officer.

11 The next part of that is that you not have contact
12 with any minor child without being supervised by an adult
13 family member unless authorized by the probation officer and
14 that includes any activity such as athletic, religious,
15 volunteer, civic activities that are designed for minors under
16 the age of 18.

17 The next one is that you not date or cohabitate with
18 anyone who has children under the age of 18 unless approved in
19 advance in writing by the probation officer.

20 The next one requires you to participate in sex
21 offender counseling, so you'll be required to participate in a
22 sex offender treatment program as approved by the probation
23 officer. That could include group therapy sessions, individual
24 therapy sessions. It can include polygraph testing and you
25 will incur the cost of that treatment but that is based on your

1 ability to pay as determined by the probation officer. When
2 you receive that treatment, the Court's going to order that you
3 waive your right to any confidentiality in those records, those
4 treatment records so that the probation officer can review your
5 course of treatment, and this Court's also going to authorize
6 the release of information in the presentence report that can
7 help or assist with that treatment, the sex offender treatment.

8 And I briefly mentioned this earlier but you will be
9 required to register with the sex offender registration agency
10 in any state where you live, where you're employed, where
11 you're a student, as directed by the probation officer.

12 Anything else on the conditions from Probation?

13 **PROBATION OFFICER GARCIA:** No, Your Honor, just the
14 general mental health special condition which --

15 **THE COURT:** Yes, and I did -- I believe that was the
16 first one I stated, the mental health --

17 **PROBATION OFFICER GARCIA:** Okay.

18 **THE COURT:** -- treatment. I believe I covered that.
19 So the Court will not impose a fine. There's no restitution to
20 address before the Court so the Court --

21 **MR. MARTINEZ:** That's correct, Your Honor.

22 **THE COURT:** -- will not impose any restitution. The
23 Court has considered the advisory guideline sentencing factors
24 set forth in 3553. The Court finds the sentence imposed is
25 sufficient but not greater than necessary to impose an

1 appropriate sentence. The Court finds the sentence promotes
2 respect for the law and provides just punishment.

3 There was only one count in the indictment?

4 **MR. MARTINEZ:** That's correct, Your Honor.

5 **THE COURT:** And he entered a plea to that.

6 Mr. Carlin, you do have the right to appeal your conviction and
7 sentence here. If you want to do that, you must file a notice
8 with the Court, a notice of appeal within 14 days; and if you
9 can't afford an attorney or the cost of an appeal, you can ask
10 the Court to appoint you an attorney. Do you understand your
11 right to appeal your conviction and sentence?

12 **THE DEFENDANT:** Yes.

13 **THE COURT:** Have you understood everything we've done
14 today?

15 **THE DEFENDANT:** Yes, Your Honor.

16 **THE COURT:** Do you have any questions about anything?

17 **THE DEFENDANT:** No.

18 **THE COURT:** Okay. Mr. Byrne?

19 **MR. BYRNE:** I'd just like to ask the Court to
20 consider our --

21 **THE COURT:** Recommendation, yeah. Court will make a
22 recommendation that he be placed in a facility near Colorado
23 Springs, Colorado. Anything else?

24 **MR. BYRNE:** Your Honor --

25 **PROBATION OFFICER GARCIA:** Your --

1 **MR. BYRNE:** -- we also suggested a concurrent
2 sentence. The Court can --

3 **THE COURT:** So there is nothing convened in state
4 court, doesn't sound like there's going to be and in terms of
5 the revocation -- so he was in Texas state custody, nothing's
6 pending there, so federal custody will be sent maybe to
7 Colorado to address what's convened there?

8 **MR. BYRNE:** Possibly. I don't know.

9 **THE COURT:** Oh, yeah.

10 **PROBATION OFFICER GARCIA:** I think what's happening in
11 Colorado is separate. I'm not sure they're interested in
12 extradition at all but he is on a writ so he's in state custody
13 right now. But when those charges are dropped, he'll roll over
14 to the federal system and --

15 **THE COURT:** Okay.

16 **PROBATION OFFICER GARCIA:** -- likely they'll give him
17 all the time that he was incarceration (sic) towards this
18 sentence.

19 **THE COURT:** But he -- okay, for Colorado?

20 **PROBATION OFFICER GARCIA:** No. For Colorado, I don't
21 think is --

22 **THE COURT:** But Texas doesn't sound like it's doing
23 anything.

24 **PROBATION OFFICER GARCIA:** Right. He still is on a
25 writ of habeas as far as I'm concerned or as far as I know.

1 **THE COURT:** So they may dismiss if there's anything
2 pending? Is there something pending or it was just going to
3 wait to see what happened here or what?

4 **MR. MARTINEZ:** That's correct. They were going to
5 wait to see what happened in -- well, they were going to --
6 they're going to dismiss their case after we're done here
7 today.

8 **THE COURT:** Okay.

9 **MR. BYRNE:** Judge, just so the Court knows, the --
10 the First Assistant that Mr. Martinez --

11 **THE COURT:** Is gone.

12 **MR. BYRNE:** -- he's gone so I don't know what their
13 stance is at this point. I -- you know, we can assume that --
14 and it sounds like that's what usually happens is the -- his
15 state case will be dismissed but I don't know that. I don't --

16 **PROBATION OFFICER GARCIA:** I had this conversation,
17 Your Honor, with the State Prosecutor's Office as well and they
18 basically told me they were going to dis -- they were waiting
19 for this hearing.

20 **THE COURT:** Okay. So what Mr. Byrne has requested
21 then probably, right, is that the Colorado -- anything that
22 happens in Colorado run concurrent.

23 **MR. BYRNE:** And also if there is a state charge and
24 he gets a sentence on that one, I'd like -- we'd like to ask
25 the Court to make that recommendation also.

1 **THE COURT:** Anything from the Government on that?

2 **MR. MARTINEZ:** No, Your Honor. I would say let the
3 state government do whatever they're going to do.

4 **THE COURT:** Yeah.

5 **MR. BYRNE:** Well, I think that they will do whatever
6 they want to do. I think what that does is it -- if he does go
7 to state custody, he's sentenced and he serves his sentence
8 with the state and then he goes into federal custody, it'll
9 broaden the BOP's, I guess, discretion or it would encourage
10 the Bureau of Prisons --

11 **THE COURT:** Right.

12 **MR. BYRNE:** -- to give him credit for the time he
13 spent in state custody.

14 **THE COURT:** But I think where the issue is that he
15 was taken in state -- Texas state custody -- I'm fairly
16 comfortable that those charges are not going to proceed so he
17 is now in federal custody so Colorado, anything they do is
18 going to be after he's been sentenced here, right, so he would
19 be doing his fed time first. So I will allow that court to
20 decide if they want to run their sentence, if any, concurrent
21 with this sentence because I don't think we're going to have
22 the issue where while he's in state, he was -- he's here on a
23 writ because I'm confident from what's been presented to the
24 Court that the Texas -- anything that may have been pending
25 will be dismissed so then he's going to be a federal prisoner

1 if he goes to Colorado. So anything else?

2 **MR. MARTINEZ:** Nothing from the Government, Your
3 Honor.

4 **MR. BYRNE:** In the event that there's an appeal, the
5 sentence is procedurally and substantively unreasonable,
6 particularly with the sex offender conditions of supervised
7 release. Thank you, Your Honor.

8 **THE COURT:** Okay. If nothing further then, he can be
9 remanded. Was there something else?

10 **PROBATION OFFICER GARCIA:** Yeah. Just one thing,
11 Your Honor, just for clarity on the judgment with the
12 restitution, I understand there's not going to be one imposed
13 but the reason for the judgment I'll have to check off, would
14 it be just --

15 **THE COURT:** Reason there -- there's not restitution?

16 **PROBATION OFFICER GARCIA:** Yes.

17 **THE COURT:** Because there was nothing presented --

18 **PROBATION OFFICER GARCIA:** Nothing presented --

19 **THE COURT:** -- to the Court at all. There's no
20 evidence before the Court to impose any restitution at all.
21 So --

22 **PROBATION OFFICER GARCIA:** Thanks, Judge.

23 **THE COURT:** Okay.

24 (Hearing adjourned at 11:09 a.m.)

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is written above a horizontal line.

Signed

November 2, 2016

Dated

TONI HUDSON, TRANSCRIBER